IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C.R. No. 138 of 2005.

Date of decision: 28.12.2005.

Virender Kumar Puri ... Petitioner

Versus

Cantonment Board, Kasauli & Anr. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr. Rajiv Sharma, Senior Advocate with Mr. Deepak Kaushal, Advocate.

For the respondents: Mr. Baldev Singh, Advocate.

V.M. Jain, J. (Oral):

This revision petition has been filed by the plaintiff – petitioner against the orders passed by the Courts below, whereby the ad interim injunction application filed by the plaintiff – petitioner during the pendency of the suit was dismissed by the trial Court and the appeal filed by the plaintiff was dismissed by the learned District Judge.

The facts which are relevant for the decision of the present petition are that the plaintiff had filed a suit for injunction and alongwith the suit, the plaintiff had filed an application under Order 39 Rules 1 and 2 read with Section 151 C.P.C. for the grant of ad interim injunction, restraining the defendant – Board from demolishing the construction of the building made by the plaintiff on the suit property.

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[1]Whether reporters of Local Papers may be allowed to see the judgment?

The suit and the application were contested by the defendants by filing written statement and reply, alleging therein that the plaintiff was not entitled to the grant of ad interim injunction.

After hearing the learned counsel and perusing the record, the learned trial Court found that the plaintiff was not entitled to the grant of ad interim injunction. Resultantly, the ad interim injunction application was dismissed by the trial Court and the appeal filed by the plaintiff was also dismissed by the learned District Judge. Aggrieved against the same, the plaintiff filed the present revision petition in this Court.

Notice was ordered to be issued to the respondents and the records were also requisitioned.

After hearing the learned counsel and perusing the record, in my opinion, there is no merit in this revision petition and the same is liable to be dismissed. The plaintiff had primarily sought the relief of ad interim injunction on the ground that he had applied to the Cantonment Board for the sanction of the plans and since the plans were not sanctioned or rejected within the stipulated period of one month, he had sent a reminder and since no action was taken by the Cantonment Board in this regard in fifteen days, he had raised the construction and that the same was in accordance with law and as such, the defendant – Board could not be allowed to demolish the said construction raised by him. However, from a perusal of the record, this plea taken by the plaintiff stands falsified. Initially the plaintiff had submitted the plans alongwith the application dated 2.3.2004 (wrongly mentioned as 2.4.2004). Vide letter dated 26.3.2004 Cantonment Board returned the application alongwith the building plans on the ground that unauthorized construction was involved in the premises. Thereafter, the petitioner resubmitted the

application alongwith the building plans vide letter dated 29.7.2004 and vide letter dated 27.8.2004, the same were returned to the plaintiff – petitioner for resubmitting the same alongwith copy of lease deed for proceeding further in the matter.

From the perusal of the above, it would be clear that the application which was submitted on 2.3.2004 for the sanction of the plans, was returned to the plaintiff on 26.3.2004 alongwith the original plans and subsequently when the plaintiff had again submitted the application on 29.7.2004 alongwith the building plans, the same was returned to him on 27.8.2004.

Under Section 171(6) of the Cantonments Act, 1924 (hereinafter to be referred as the Act), it has been provided that where the Board neglects or omits for one month after the receipt of a valid notice (for sanctioning erection or re-erection) and such person thereafter by a written communication calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication, the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be, unconditionally. In the present case, as referred to above, the defendant – Board had not neglected or omitted to pass appropriate orders on the application filed by the plaintiff for the sanction of the building plans. On the other hand, the defendant – Board had returned the application alongwith the building plans with objections, within one month of the filing of the said application for sanction of the building plans. It was thereafter that the plaintiff had resubmitted the building plans for sanction and this time again, the defendant – Board had returned the same to the plaintiff within one month of the receipt thereof.

Under these circumstances, it could not be said that the defendant – Board had omitted or neglected to pass appropriate order on the application for the sanction of the building plans nor could it be said that it was a case where the plaintiff had served notice upon the defendant – Board in this regard. On the other hand, initially the building plans were submitted, which were returned and again the plaintiff had submitted the building plans which were again returned to the plaintiff within the stipulated period. Under these circumstances, it could not be said that the plaintiff – petitioner was entitled by law to raise construction without getting building plans sanctioned nor could it be said that the building plans automatically stood sanctioned unconditionally, on the facts of the present case. On the other hand, it would be clear that the building plans submitted by the plaintiff were returned by the defendant – Board to the plaintiff with certain objections, each time, within the stipulated period.

In view of the detailed discussion above, in my opinion, the Courts below were perfectly justified in dismissing the ad interim injunction application of the plaintiff – petitioner and no fault could be found with the orders passed by the Courts below. I am further of the opinion that the Courts below had exercised judicial discretion while dismissing the ad interim injunction application of the plaintiff – petitioner and no fault could be found with the same.

In view of the detailed discussion above, finding no merit in this revision petition, the same is hereby dismissed.

At this stage, the learned counsel appearing for the plaintiff – petitioner submitted before me that under Section 274 of the Act, the plaintiff – petitioner could file appeal against the orders passed by the

defendant – Board returning the application of the plaintiff for the sanction of the building plans and that under Section 185 of the Act, the defendant – Board was competent to compound the construction already made by the plaintiff at the spot. He has submitted that he will be taking appropriate steps in this regard.

So far as this Court is concerned, this Court has already dismissed the revision petition filed by the petitioner. So far the plaintiff – petitioner is concerned, he would be at liberty to take appropriate steps, if so advised, in accordance with law and if any steps are initiated on behalf of the plaintiff – petitioner, the same shall be disposed of by the appropriate authorities in accordance with law.

It is made clear that nothing stated above shall be taken as an expression of opinion on the merits of the case.

Since the trial Court record was summoned by this Court, parties through their counsel are directed to appear before the learned trial Court on **20th January, 2006**, for further proceeding in accordance with law.

CMP No. 187 of 2005:

In view of the orders passed in the main petition, the stay order dated 11.11.2005 shall stand vacated and the application stands disposed of.

(V.M. Jain),
Judge

December 28, 2005
(BSS)